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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. [redacted] 14

ALBERT BENJAMIN CHANDLER, INDIVIDUALLY AND AS GOVERNOR OF THE COMMONWEALTH OF KENTUCKY, ET AL.,
Petitioners,

vs.

JAMES W. WISE AND RAY B. MOSS.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY.

J. W. JONES,
Assistant Attorney General of Kentucky,
Counsel for Petitioners.

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Johnson, Lieutenant Governor of the Commonwealth of Kentucky, and the President of the Senate of the General Assembly of Kentucky; Charles D. Arnett, Secretary of State of the Commonwealth of Kentucky; John Kirtley, Speaker of the House of Representatives of the General Assembly of Kentucky; William A. Perry, Chief Clerk of the Senate of the General Assembly of Kentucky, and Brooks Hargrove, Chief Clerk of the House of Representatives of the General Assembly of Kentucky, respectfully present to this Court their petition for a writ of certiorari addressed to the Court of Appeals of Kentucky commanding said court and the clerk thereof to certify to this Court the record and proceedings of the case in said court wherein your Petitioners were the appellants, and the respondents, James E. Wise and Ray B. Moss, were the respondents, together with its opinion therein and also its opinion in the case wherein your petitioners were the respondents, and the respondents herein, James E. Wise and Ray B. Moss, were the appellants for the review and determination of said cause by this Court.

The reasons relied on for the issuance of said writ and upon which your petitioners believe that a writ ought to be issued are as follows:

First. The Court of Appeals of Kentucky misinterpreted Article 5 of the Constitution of the United States (a) in holding that where a proposed amendment to the Federal Constitution has been rejected by more than one-fourth of the States, and the rejections have been duly certified to the Secretary of State of the United States, a State may not thereafter ratify the proposed amendment; (b) in holding that the Kentucky Legislature in rejecting the proposed Child Labor Amendment to the Federal Constitution exhausted its power further to consider said proposed amendment without a resubmission thereof by Congress;

(c) in holding that the proposed Child Labor Amendment to the Federal Constitution was no longer before the people of the United States because of the expiration of a reasonable time since said proposed amendment was submitted by Congress; (d) in holding that the ratification by the Kentucky Legislature of the proposed Child Labor Amendment was invalid.

Second. Substantial Federal questions have been decided by final judgment of the Court of Appeals of Kentucky.

Third. In the case of *Rolla W. Coleman et al.* v. *Clarence W. Miller, Secretary of the Senate of the State of Kansas, et al.*, 71 Pac. (2d) 518, the Supreme Court of the State of Kansas adjudged the same Federal questions involved in this case *contra* to the adjudgment thereof by the Court of Appeals of Kentucky. This conflict in decisions relative to substantial Federal questions should be determined by this Court.

Fourth. The Federal questions involved herein have not been determined by this Court; they are very important to the people of the United States, and a determination of said questions should be made by this Court as soon as possible.

In their behalf, your petitioners state the following facts:

The respondents herein, as citizens and taxpayers of the Commonwealth of Kentucky of the United States of America, brought this action against your petitioners on January 15, 1937, in the Franklin Circuit Court in Frankfort, Kentucky, to have declared invalid the action of the Senate of the Kentucky Legislature on January 12, 1937, and the action of the House of Representatives of the Kentucky Legislature on January 13, 1937, adopting a resolution purporting to ratify the proposed Child Labor Amendment to the Constitution of the United States, which was

submitted to the people of the United States by Congress on January 2, 1924, and which was affirmatively rejected by the Kentucky Legislature on March 24, 1926. An injunction was asked for against your petitioners to restrain them from sending certified copies of said resolution to the Secretary of State of the United States and to the presiding officer of the United States Senate, and to the Speaker of the House of Representatives of the United States, or any of them, and to enjoin your petitioners from notifying in any manner the Secretary of State of the United States of the adoption by the Kentucky Legislature of said resolution. Thereafter the respondents herein amended their petition, and asked that a mandatory injunction be issued against your petitioner Albert Benjamin Chandler, Governor of the Commonwealth of Kentucky, to require him to notify forthwith the Secretary of State of the United States that at the time your said petitioner sent attested copies of said resolution to the Secretary of State of the United States the validity of the adoption of said resolution had been challenged, and that prior to the receipt of said copies by the Secretary of State of the United States your said petitioner had been restrained by an order of court from giving notice in any manner to the Secretary of State of the United States of the adoption of said resolution, and that any notice given in violation of said restraining order was null and void. Thereafter the respondents herein amended their petition, and asked for a mandatory injunction against your petitioners Albert Benjamin Chandler, individually and as Governor of the Commonwealth of Kentucky, and Charles D. Arnett, individually and as Secretary of State of the Commonwealth of Kentucky, requiring them to notify the Secretary of State of the United States that said resolution theretofore certified by them to the Secretary of State of the United States was void and of no effect. Your petitioners filed a general demurrer to the respondents'

petition and the same as amended. The general demurrer was sustained by the circuit court. Thereupon the respondents herein appealed to the Court of Appeals of Kentucky, and obtained a reversal of the judgment of the lower court. See R. page 28; see *Wise et al.* v. *Chandler et al.*, 108 S. W. (2d) 1024, 270 Ky. 1. Upon filing the mandate of the Court of Appeals of Kentucky with the Franklin Circuit Court an order was entered pursuant to said mandate overruling the general demurrer of your petitioners. Thereupon your petitioners declined to plead further, and judgment was entered adjudging (a) that the respondents herein had the right to maintain this action; (b) that the adoption by the Legislature of Kentucky of said resolution did not operate to ratify said proposed amendment; (c) that notice given by your petitioner Albert Benjamin Chandler, Governor of the Commonwealth of Kentucky, to the Secretary of State of the United States that the Legislature of Kentucky had ratified said proposed amendment was of no effect; (d) that the Clerk of the Franklin Circuit Court be directed to give official notice to the Department of State of the United States that said resolution was and is invalid; that the proposed amendment has not been ratified by the Legislature of Kentucky according to the provisions of the Constitution of the United States, and the notice given by your petitioner Albert Benjamin Chandler, Governor of the Commonwealth of Kentucky, to the Secretary of State of the United States notifying him of the adoption of said resolution was and is of no effect. After the entry of said judgment your petitioners appealed therefrom to the Court of Appeals of Kentucky, which court affirmed the judgment of the circuit court.

Your petitioners are advised that said second decision of the Kentucky Court of Appeals is a final judgment, and is erroneous.

We have hereinbefore set out the errors which we claim were committed by the Court of Appeals of Kentucky in deciding this case. The rejection of a proposed amendment to the Federal Constitution by more than one-fourth of the States does not operate to defeat the proposed amendment because such action by the stated number of States does not have any effect on our Federal Constitution. Each State, including the fourteen States that have rejected the proposed amendment, remains free to take whatever action it desires with respect to the proposed amendment.

Article V of the Federal Constitution is as follows:

> "The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

In first rejecting the proposed Child Labor Amendment the Kentucky Legislature did not exhaust its power further to consider said proposed amendment. Jameson's Constitutional Convention (4th Edition), Sections 578-581. When the thirty-sixth State has ratified, either by action of its legislature or by convention, a proposed amendment to our Federal Constitution, the amendment process has been completed and the proposed amendment then becomes a part of our Federal Constitution. Until the thirty-sixth State has

so acted, any State which has previously acted with respect to the proposed amendment, either in the ratification or the rejection thereof, is free to reconsider the proposed amendment and take such subsequent action with respect thereto as it desires.

Congress has proposed the Child Labor Amendment without any limitation as to time of ratification thereof. The Court of Appeals of Kentucky erred in holding that the proposed amendment was no longer before the people because of the expiration of a reasonable time since the submission thereof by Congress. *Dillon* v. *Glass*, 256 U. S. 368.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued under the seal of this Court, directed to the Court of Appeals of Kentucky, at Frankfort, Kentucky, commanding the said court to certify and send to this Court on the day to be designated, a full and complete transcript of the record, and all proceedings of the said Court of Appeals of Kentucky had in said cause, to the end that the said cause may be reviewed and determined by this Honorable Court as provided by law, and that the said judgment of the Court of Appeals of Kentucky be reversed by this Honorable Court, and for such further relief as may seem proper.

J W JONES,
Assistant Attorney General
of the Commonwealth of Ky.,
Counsel for Petitioners.

COMMONWEALTH OF KENTUCKY,
County of Franklin:

J. W Jones, Assistant Attorney General of the Commonwealth of Kentucky, being first duly sworn, says that he is the counsel for the petitioners in the foregoing peti-

tion; that he has read the foregoing petition and knows well the contents thereof; that he has also carefully read and studied a duly certified copy of the transcript of record which accompanies the petition herein, being the transcript of record in the case at bar; that the matters in said petition are, in the judgment of this affiant, duly supported in and by said transcript of record, and that he knows of the above proceedings had, and that the acts in said petition herein stated are true to the best of his knowledge and belief.

J W JONES,
Assistant Attorney General
of the Commonwealth of Ky.

Subscribed and sworn to before me by J W Jones, Assistant Attorney General of the Commonwealth of Kentucky, this the 11th day of March, 1938.

My commission as notary public will expire September 17, 1941.

FORREST MILLER,
Notary Public, Franklin County, Kentucky.

I do hereby certify that I have carefully examined the foregoing petition for a writ of certiorari, and the allegations thereof are true as I verily believe, and, in my opinion, is well founded, and the case is one in which the prayer of the petition should be granted by this Court.

J W JONES,
Assistant Attorney General
of the Commonwealth of Ky.,
Counsel for Petitioners.